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| 10/053,754      | 01/22/2002  | Steven B. Dunn       | MBI-1085            | 5503             |

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EXAMINER

PUROL, DAVID M

| ART UNIT | PAPER NUMBER |
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3634

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Application Number: 10/053,754  
Filing Date: January 22, 2002  
Appellant(s): DUNN ET AL.

MAILED

OCT 27 2004

GROUP 3600

\_\_\_\_\_  
John L. Knoble  
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 14, 2004.

(1) *Real Party in Interest*

Art Unit: 3634

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1,2,9-18,27,41,43,44; 3-8,23-26; 19-22,30,33-40,45 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

Art Unit: 3634

|           |     |        |
|-----------|-----|--------|
| 5,226,467 | Lii | 7-1993 |
|-----------|-----|--------|

|           |         |        |
|-----------|---------|--------|
| 5,330,251 | McGuire | 7-1994 |
|-----------|---------|--------|

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,2,9-18,27,41,43,44 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lii '467. This rejection is set forth in a prior Office Action, mailed on November 3, 2003.

Claims 3-8,23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lii '467 in view of McGuire. This rejection is set forth in a prior Office Action, mailed on November 3, 2003.

Claims 19-22,30,33-40,45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lii '467 in view of Park. This rejection is set forth in a prior Office Action, mailed on November 3, 2003.

**(11) Response to Argument**

The appellants state that the bracket assemblies 82,83 of Lii '467 do not appear to be used for mounting on a vehicle window and instead appear to be used for mounting over a vehicle windshield and as such Lii does not meet the limitation of having "first mounting means for mounting said housing on a vehicle window". This is not convincing for the brackets assemblies 82,83 of Lii '467 are so sized and shaped to fit over various structures associated with a vehicle including a vehicle window.

Art Unit: 3634

The appellants state that Lii '467 does not disclose a flexible weblike shade element but rather an opaque plastic film. This is not convincing for an opaque plastic film is a flexible weblike shade per se.

The appellants argue that Lii '467 discloses a retraction mechanism in which a user is required to linearly slide a control element in order to retract the windshield blind which permits partial retraction of the windshield blind but not by a controlled predetermined distance as is set forth in independent claims one and further state that to cause partial retraction in Lii a consumer would have to slide the control element in one direction and then quickly reverse it back to the neutral position. However, even as stated by the appellants such a movement is a controlled movement in that it is a predetermined motion instigated by a consumer to partially retract the shade element by a controlled predetermined distance.

The appellants state that Lii '467 does not disclose a spring that is functionally interposed between the housing and the drum member. The spring 5 as disclosed by Lii '467 lies structurally within the housing 8 and the drum member 1 and as such fully responds to the recitation of "functionally interposed" insofar as defined.

The appellants argue that Lii '467 do not disclose a control element depressible by a consumer, first and second clutch members, and controlled retraction structure that comprises releasable structure for preventing rotation of the first clutch member with respect to the housing. This is not convincing for Lii '467 discloses a control element 7 in the form of a push block, first and second clutch members 3,61 having

Art Unit: 3634

releasable structure 31,611 for preventing rotation of the first clutch member 3 with respect to the housing 8.

The appellants state that Lii '467 discloses a curved cap 8 that only extends for a small fraction around the circumference of the support drum and as such a person would clearly be able to touch a portion of the shade element that is wrapped about the drum member. The housing 8 of Lii '467 is shaped and sized so as to preclude a person from being able to touch that portion of the shade element which is wrapped about the drum member 1 which fully responds to claimed housing of the instant application.

The appellants argue that Lii '467 does not meet the limitation of a retraction mechanism for enabling a consumer by depressing a mechanical control element using just one hand to move the shade element to any one of a plurality of different predetermined indexed positions. This argument is unfounded in that there is nothing to indicate that the use of more than one hand is necessary for retracting the shade element of Lii '467 to any one of a plurality of different predetermined positions. The appellants further state that there is a fundamental operable difference between the sliding motion disclosed in the Lii '467 reference and the depressing motion of the instant application. It should be noted that one must depress the push block 7 of Lii '467 in order to actuate it, see figure 3 of the Lii '467 reference which depicts an arrow indicating the necessary pushing motion.

The appellants state that the element 27 of McGuire is not a marker element and further does not disclose that it can be affixed to the shade element. This is not

Art Unit: 3634

convincing for the game board web 27 of McGuire is explicitly a marker element and further that it is disclosed as being secured to the shade element by hook and loop fasteners 26,28.

The appellants argue that Park does not disclose a gripping means and at best Park discloses an anchor assembly 5 that holds the various suction cups. This is not convincing for the anchor assembly 5 of Park provides a means by which one may grasp the free end 23 of the shade element and as such is a gripping means. The anchor assembly 5 of Park further comprises second mounting means in the form of suction cups 4.

The appellants state that the long narrow strip of Park does not have sufficient width to permit a consumer to conveniently disengage the suction cups from the vehicle window and further that it does not disclose or suggest a width that is sufficient to create a lever arm that is within a range of about .4 inch to about 2.5 inch. The particular width of the gripping member is an engineering design choice inasmuch as one having ordinary skill in the art would have readily recognized the selection of a particular width for the purpose of facilitating the movement of the suction cups from the vehicle window.

The appellants argue that the limitations related to the force of adhesion have not been addressed. The claims of the instant application fail to set forth any structure of the suction cups which would define a force of adhesion not encompassed by the suction cups as disclosed by Park. Even so, however, one having ordinary skill in the

Art Unit: 3634

art would have readily recognized the advantages of using various strength suction cups for their explicit purpose of securing the sunshade to a desired surface structure.

The appellants argue that neither Lii '467 nor Park disclose a gripping member that will engage a vehicle door before a suction cup will. This argument is more specific than the claims for the claims of the instant application are drawn to the sunshade per se and not to the combination of the shade with the vehicle.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
David Puroi

**Primary Examiner  
Art Unit 3634**

DMP  
October 22, 2004

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